

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 09-3569

PEOPLE OF THE VIRGIN ISLANDS

v.

WILLIAM G. CLARKE,

Appellant

(D.V.I. No. 3-09-cr-00009-001)

Present: SCIRICA, RENDELL and CHAGARES, Circuit Judges.

1. Submitted by Clerk's Order for possible dismissal
2. Response by Appellant.
3. Response by Appellee.
4. Reply by Appellant to Appellee's Response.
5. Motion by Appellant for an Expedited Order Staying the Order of Remand Issued by District Court on 6/25/09.
6. Supplement by Appellant to the Motion for an Expedited Order Staying the Order of Remand.
7. Response by Appellee in Opposition to the Motion for an Expedited Order Staying the Order of Remand.
8. Reply by Appellant to the Response to the Motion for an Expedited Order Staying the Order of Remand.
9. Renewed Motion by Appellant for an Expedited Entry of Stay Order and Second Supplement to Appellant's 06/24/10 Expedited Motion for Entry of Stay Order.
10. Response by Appellee in Opposition to Renewed Motion for expedited entry of stay order.
11. Third supplement filed by Appellant to Appellant's 6/24/10 Expedited Motion for Entry of Stay Order.

See ECO-51-E, BCO-111 & ECO-036-E.

ORDER

We conclude that we do not have jurisdiction over William G. Clark’s appeal of the District Court of the Virgin’s Island’s remand order.

Mr. Clark removed this action pursuant to 28 U.S.C. § 1442(a)(1). The District Court remanded the matter to the Superior Court of the Virgin Islands based on its conclusion that Mr. Clark failed to prove that he was acting “under color of state office” when he committed the crime at issue in the underlying prosecution. In remanding the case, the District Court essentially determined that it lacked subject-matter jurisdiction because “a basic element of removal jurisdiction was lacking.” *See Feidt v. Owens Corning Fiberglas Corp.*, 153 F.3d 124, 127 (3d Cir. 1998). Because the remand order was thus issued under § 1447(c), § 1447(d) bars our review of the District Court’s remand order. *See Thermtron Prods., Inc. v. Hermansdorfer*, 423 U.S. 336, 343, 346 (1976) (abrogated on other grounds) (“[R]emand orders issued under § 1447(c) . . . are immune from review under § 1447(d)”); *Feidt v. Owens Corning Fiberglas Corp.*, 153 F.3d 124, 126 (3d Cir. 1998) (noting that where the 1447(d) bar applies, it prohibits review of remand orders “whether erroneous or not and whether review is sought by appeal or by extraordinary writ.”) (quoting *Thermtron Prods.*, 423 U.S. at 346).

In the alternative, even if the District Court’s remand order were not based on a determination that it lacked subject-matter jurisdiction, 1447(d) would still preclude our review of Mr. Clark’s appeal because the District Court’s remand order was based on a defect in removal. The jurisdictional bar of 1447(d), as limited by 1447(c), applies not only to remand orders based on a lack of subject-matter jurisdiction but also to remand orders based on “removal defects.” We have interpreted 1447(c)’s removal defect language broadly to apply to *any* defects in removal. *See Cook v. Wikler*, 320 F.3d 431, 435 (3d Cir. 2003) (“So long as a district court remands a case to state court based on a conclusion that the removal was ‘not authorized by law,’ section 1447(d) ‘prohibits review.’”) (quoting *Pierpoint v. Barnes*, 94 F.3d 813, 818 (2d Cir. 1996)).

Accordingly, this appeal is dismissed. Motions for stay (and expedition thereof) are denied as moot.



By the Court,

/s/Marjorie O. Rendell
Circuit Judge

DATED: 13 October 2010

Marcia M. Waldron
Marcia M. Waldron, Clerk

OFFICE OF THE CLERK

MARCIA M. WALDRON

CLERK



UNITED STATES COURT OF APPEALS

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October 13, 2010

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RE: People of VI v. Clark

Case Number: 09-3569

District Case Number: 3-09-cr-00009-001

ENTRY OF JUDGMENT

Today, **October 13, 2010** the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment

45 days after entry of judgment in a civil case if the United States is a party

Page Limits:

15 pages

Attachments:

A copy of the panel's dispositive order only. No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. If separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to a combined 15 page limit. If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,

Marcia M. Waldron

Marcia M. Waldron,

Clerk

By: Anthony Infante,
Case Manager

